

## Federal Communications Commission

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have been operated for less than one year.

At its discretion, the Commission may require the submission of an affirmative, factual showing (supported by affidavits of a person or persons with personal knowledge thereof) to demonstrate that the proposed assignor or transferor has not acquired an authorization or operated a station for the principal purpose of profitable sale rather than public service. This showing may include, for example, a demonstration that the proposed assignment or transfer is due to changed circumstances (described in detail) affecting the licensee subsequent to the acquisition of the license, or that the proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests.

(c) If a proposed transfer of radio facilities is incidental to a sale of other facilities or merger of interests, any showing requested under paragraph (a) of this section shall include an additional exhibit which:

(1) Discloses complete details as to the sale of facilities or merger of interests;

(2) Segregates clearly by an itemized accounting, the amount of consideration involved in the sale of facilities or merger of interests; and

(3) Demonstrates that the amount of consideration assignable to the facilities or business interests involved represents their fair market value at the time of the transaction.

(d) For the purposes of this section, the one year period is calculated using the following dates (as appropriate):

(1) The initial date of grant of the license, excluding subsequent modifications;

(2) The date of consummation of an assignment or transfer, if the station is acquired as the result of an assignment of license, or transfer of control of corporate licensee; or

(3) The median date of the applicable commencement dates (determined pursuant to paragraphs (c) (1) and (2) of this section) if the transaction involves two or more stations. (The median date is that date so selected such that fifty percent of the commencement dates of the total number of stations, when arranged in chronological order, lie

below it and fifty percent lie above it. When the number of stations is an even number, the median date will be a value half way between the two dates closest to the theoretical median).

[44 FR 60534, Oct. 19, 1979, as amended at 48 FR 33900, July 26, 1983; 50 FR 5994, Feb. 13, 1985; 52 FR 27554, July 22, 1987. Redesignated and amended at 52 FR 37780, Oct. 9, 1987; 58 FR 11798, Mar. 1, 1993; 61 FR 26674, May 28, 1996]

### § 21.40 Modification of station license.

(a) Except as provided in §§ 21.41 and 21.42, no modification of a license issued pursuant to this part (or the facilities described thereunder) shall be made except upon application to the Commission and upon finding by the Commission that:

(1) Such modification will promote the public interest, convenience and necessity, or

(2) That the provisions of the Communications Act of 1934 or of any treaty ratified by the United States will be more fully complied with if such application is granted.

(b) No application for modification to extend a license construction period will be granted for delays caused by lack of financing or for lack of site availability. Applications for time extensions for other reasons must include a verified statement from the application showing that the licensee has made diligent efforts to construct the facilities and:

(1) That additional time is required due to circumstances beyond the applicant's control, in which case the applicant must describe such circumstances and must set forth with specificity and justify the precise extension period requested; or

(2) That there are unique and overriding public interest concerns that justify such an extension, in which case the applicant must identify such interests and must set forth and justify a precise extension period.

(c) Notwithstanding the provisions of paragraph (b), when a station license has been assigned or transferred pursuant to § 21.38, any extension of time will be limited so that the time left to construct after Commission grant of the transfer or assignment will be no

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more than the time remaining for construction at the date of the filing of the application for transfer or assignment.

[52 FR 37780, Oct. 9, 1987]

### § 21.41 Special processing of applications for minor facility modifications.

(a) Unless an applicant is notified to the contrary by the Commission, as of the twenty-first day following the date of public notice, any application that meets the requirements of paragraph (b) of this section and proposes only the change specified in paragraph (c) of this section shall be deemed to have been authorized by the Commission.

(b) An application may be considered under the procedures of this section only if:

(1) It is in the Multipoint Distribution Service;

(2) The cumulative effect of all such applications made within any 60 days period does not exceed the appropriate values prescribed by paragraph (c) of this section;

(3) The facilities to be modified are not located within 56.3 kilometers (35 miles) of the Canadian or Mexican border;

(4) It is acceptable for filing, is consistent with all of the Commission's rules, and does not involve a waiver request;

(5) It specifically requests consideration pursuant to this section;

(6) Frequency notification procedures are complied with and a copy of the application has been served on those who also were served under § 21.902; and

(7) In the Multipoint Distribution Service, the modified facility would not produce a power flux density that exceeds  $-73$  dBW/m<sup>2</sup>, pursuant to §§ 21.902 and 21.939 at locations on the boundaries of protected service areas to which there is an unobstructed signal path.

(c) The modifications that may be authorized under the procedures of this section are:

(1) Changes in a transmitter and existing transmitter operating characteristics, or protective configuration of transmitter, provided that:

(i) In the Multipoint Distribution Service, any increase in EIRP is one

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and one-half dB or less over the previously-authorized power value; or

(ii) The necessary bandwidth is not increased by more than 10% of the previously authorized necessary bandwidth.

(2) Changes in the height of an antenna, provided that:

(i) In Multipoint Distribution Service, any increase in antenna height is less than 3.0 meters above the previously authorized height; and

(ii) The overall height of the antenna structure is not increased as a result of the antenna extending above the height of the previously authorized structure, except when the new height of the antenna structure is 6.1 meters or less (above ground or man-made structure, as appropriate) after the change is made.

(3) Change in the geographical coordinates of a transmit station by ten seconds or less of latitude, longitude or both, provided that when notice to the FAA of proposed construction is required by part 17 of this chapter for antenna structure at the previously authorized coordinates (or will be required at the new location) the applicant must comply with the provisions of § 21.15(d).

(d) Upon grant of an application under the procedure of this section and at such time that construction begins, the applicant must keep a complete copy of the application (including the filing date) with the station license if construction is commenced prior to the receipt of the authorization.

[52 FR 37780, Oct. 9, 1987, as amended at 55 FR 46009, Oct. 31, 1990; 58 FR 44894, Aug. 25, 1993; 60 FR 36552, July 17, 1995; 61 FR 4364, Feb. 6, 1996; 61 FR 26674, May 28, 1996]

### § 21.42 Certain modifications not requiring prior authorization.

(a) Equipment in an authorized radio station may be replaced without prior authorization or notification if:

(1) The replacement equipment is identical (i.e., same manufacturer and model number) with the replacement equipment; or

(2) The replacement transmitter, transmitting antenna, transmission line loss and/or devices between the